Remarks/Arguments

In a Restriction Requirement dated May 28, 2007, Inventions I-V were identified and election required. Applicant traverses the restriction requirement.

Restriction v. Election

The Restriction Requirement commences by identifying 5 different inventions and requiring an election of one of the inventions. The Restriction Requirement concludes by requiring Applicant to elect a species. Applicant clarified which of these two contradictory options were being required in a telephone conference with the Examiner. It was indicated that invention election, not species election was to be performed.

Traversal of Restriction Requirement

Restriction After Office Action on Merits

Applicant first notes that an action on the merits has previously issued in their case. MPEP § 811 requires consideration if there will be a serious burden if restriction is not required. Applicant submits that there is no showing of the serious burden. All claims were rejected in the action on the merits under a combination of §§ 102 and 103. The §102 rejections were to claims which fell into four of the stated inventions. Applicant separately argued eight sets of claims, which fall into a different four of the stated inventions. As such, both the Examiner and the Applicant have already addressed all five of the stated inventions in the action of the merits and the response. Further, given that the searching is primarily done based on selected words and large numbers of subclasses are always searched (as in the prior search when 11 different subclasses where used for any subclass limited searches, with the subclasses that were searched including two completely disparate major subclasses 229 and 241) it is submitted that the serious burden cannot be shown. Applicant respectfully submits that the requirement to show serious burden has not been met, and cannot be met as presumably all of the inventions have previously been searched.

Improper Nature of Requirement

The restriction requirement is effectively separating various sets of dependent claims on the alleged basis of sub-combinations useable together in a single combination. Applicant submits that this type of analysis is improper to use as a basis for requiring an invention election, as opposed to a species election. This type of analysis is considered proper to use when analyzing independent claims against each other, but not dependent claims against each other or against their independent claims. It will be a rare case where different specific elements of dependant claims are not useable together in a combination. That is almost a fundamental in claim drifting. Allowing such a normal structure to be used as a basis for an invention election essentially punishes an applicant for drafting varying claims to fully cover detailed aspects of an invention.

Applicant further submits that the election of invention as required is improper. Columns 1, 19, 37, and 55 have been stated as linking the five groups. Therefore if these claims are allowable, all dependent claims, including in this instance claims identified as being a separate invention, would be allowable. In a proper case of separate inventions there would be a possibility that the patentability of the claims would be different. But here if the independent claims are allowed, all the claims must be allowed. Thus the requirement to elect one invention is improper.

Correlation of Claim to Stated Classes and Subclasses

Applicant submits the classification of claims 8, 9, 26, 27, 44, 45, 62, and 63 to Group II and claims 10 – 14, 28 – 32, 46 – 50 and 64 – 68 to Group III are erroneous.

Class 370, subclass 393 is stated as being for multiplex communications (class 370), path finding or routing (subclass 391), switching a message which includes an address header (subclass 389), processing of address header for routing (subclass 392) and finally address concatenation (subclass 393). As an example, claims 8 and 9 add limitations to claim 1 relating to the direction of the flow of the frames, either original source to original destination or the reverse. They do not relate to address concatenation used to process an address header, which is commonly known as onion or source routing. Clearly this is a misclassification.

Class 310, subclass 401 is stated as being multiplex communications (class 370), pathfinding or routing (subclass 351), switching a message which includes an address header (subclass 389), having a plurality of nodes performing distributed switching (subclass 400) and finally, bridge or gateway between networks (subclass 401). Exemplary claims 10-14 do not include any limitations relating relating to bridges or gateways. Claims 10-14 relate to internal switch operations. Claim 10 simply relates to passing the frame to the connected node device. Claims 11-14 relate to the routing roles used internal to the switch. None of the claims specify limitations of bridges or gateways. This is also a misclassification.

Provisional Election

As required and subject to the above traversal, Applicant provisionally elects Group I, claims 1-7, 19-25, 37-43 and 55-61.

Conclusion

Based on the above remarks Applicant respectfully submits that the restriction requirement is improper and requests withdrawal. Reconsideration is respectfully requested.

Respectfully submitted,

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